REQUIRES TWO-THIRDS MAJORITY VOTE (§ 3)

(Reprinted with amendments adopted on May 22, 2003)

THIRD REPRINT **S.B. 320**

SENATE BILL NO. 320–SENATOR SHAFFER (BY REQUEST)

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes to provisions governing industrial insurance. (BDR 53-600)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to industrial insurance; authorizing the establishment of a system of external review for certain matters relating to industrial insurance; providing for the regulation and certification of certain external review organizations; providing for the payment of certain regulatory fees by external review organizations; revising various provisions relating to the payment of compensation to injured employees; revising certain procedures and establishing certain requirements relating to the adjudication of contested claims; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 616A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***"External review organization" means an organization which has been issued a certificate pursuant to section 3 of this act that authorizes the organization to conduct external reviews for the purposes of chapters 616A to 617, inclusive, of NRS.***

Sec. 3. ***1. The Commissioner may issue certificates authorizing qualified external review organizations to conduct external reviews for the purposes of chapters 616A to 617, inclusive, of NRS. If the Commissioner issues such certificates***

and the Commissioner determines that an external review organization is qualified to conduct external reviews for the purposes of chapters 616A to 617, inclusive, of NRS, the Commissioner shall issue a certificate to the external review organization that authorizes the organization to conduct such external reviews in accordance with the provisions of section 5 of this act and the regulations adopted by the Commissioner.

2. The Commissioner may adopt regulations setting forth the procedures that an external review organization must follow to be issued a certificate to conduct external reviews. Any regulations adopted pursuant to this section must include, without limitation, provisions setting forth:

(a) The manner in which an external review organization may apply for a certificate and the requirements for the issuance and renewal of the certificate pursuant to this section;

(b) The grounds for which the Commissioner may refuse to issue, suspend, revoke or refuse to renew a certificate issued pursuant to this section;

(c) The manner and circumstances under which an external review organization is required to conduct its business; and

(d) A fee for issuing or renewing a certificate of an external review organization pursuant to this section. The fee must not exceed the cost of issuing or renewing the certificate.

3. A certificate issued pursuant to this section expires 1 year after it is issued and may be renewed in accordance with regulations adopted by the Commissioner.

4. Before the Commissioner may issue a certificate to an external review organization, the external review organization must:

(a) Demonstrate to the satisfaction of the Commissioner that it is able to carry out, in a timely manner, the duties of an external review organization as set forth in section 5 of this act and the regulations adopted by the Commissioner. The demonstration must include, without limitation, proof that the external review organization employs, contracts with or otherwise retains only persons who are qualified because of their education, training, professional licensing and experience to perform the duties assigned to those persons; and

(b) Provide assurances satisfactory to the Commissioner that the external review organization will:

(1) Conduct external reviews in accordance with the provisions of section 5 of this act and the regulations adopted by the Commissioner;

(2) Render its decisions in a clear, consistent, thorough and timely manner; and

(3) Avoid conflicts of interest.

5. For the purposes of this section, an external review organization has a conflict of interest if the external review organization or any employee, agent or contractor of the external review organization who conducts an external review has a professional, familial or financial interest of a material nature with respect to any person who has a substantial interest in the outcome of the external review, including, without limitation:

(a) The claimant;

(b) The employer; or

(c) The insurer or any officer, director or management employee of the insurer.

6. The Commissioner shall not issue a certificate to an external review organization that is affiliated with:

(a) An organization for managed care which provides comprehensive medical and health care services to employees for injuries or diseases pursuant to chapters 616A to 617, inclusive, of NRS;

(b) An insurer;

(c) A third-party administrator; or

(d) A national, state or local trade association.

7. An external review organization which is certified or accredited by an accrediting body that is nationally recognized shall be deemed to have satisfied all the conditions and qualifications required for the external review organization to be issued a certificate pursuant to this section.

Sec. 4. NRS 616A.025 is hereby amended to read as follows:

616A.025 As used in chapters 616A to 616D, inclusive, of NRS, unless the context otherwise requires, the words and terms defined in NRS 616A.030 to 616A.360, inclusive, ***and section 2 of this act*** have the meanings ascribed to them in those sections.

Sec. 5. Chapter 616C of NRS is hereby amended by adding thereto a new section to read as follows:

1. Not later than 5 business days after the date that an external review organization receives a request for an external review, the external review organization shall:

(a) Review the documents and materials submitted for the external review; and

(b) Notify the injured employee, his employer and the insurer whether the external review organization needs any additional information to conduct the external review.

2. The external review organization shall render a decision on the matter not later than 15 business days after the date that it receives all information that is necessary to conduct the external review.

3. In conducting the external review, the external review organization shall consider, without limitation:

(a) The medical records of the insured;

(b) Any recommendations of the physician of the insured; and

(c) Any other information approved by the Commissioner for consideration by an external review organization.

4. In its decision, the external review organization shall specify the reasons for its decision. The external review organization shall submit a copy of its decision to:

(a) The injured employee;

(b) The employer;

(c) The insurer; and

(d) The appeals officer, if any.

5. The insurer shall pay the costs of the services provided by the external review organization.

6. The Commissioner may adopt regulations to govern the process of external review and to carry out the provisions of this section. Any regulations adopted pursuant to this section must provide that:

(a) All parties must agree to the submission of a matter to an external review organization before a request for external review may be submitted;

(b) A party may not be ordered to submit a matter to an external review organization; and

(c) The findings and decisions of an external review organization are not binding.

Sec. 6. NRS 616C.245 is hereby amended to read as follows:

616C.245 1. Every injured employee within the provisions of chapters 616A to 616D, inclusive, of NRS is entitled to receive promptly such accident benefits as may reasonably be required at the time of the injury and within 6 months thereafter. Such benefits may be further extended for additional periods as may be required.

2. An injured employee is entitled to receive as an accident benefit a motor vehicle that is modified to allow the employee to operate the vehicle safely if:

(a) As a result of an injury arising out of and in the course of his employment, he is quadriplegic, paraplegic or has had a part of his body amputated; and

(b) He cannot be fitted with a prosthetic device which allows him to operate a motor vehicle safely.

3. If an injured employee is entitled to receive a motor vehicle pursuant to subsection 2, a motor vehicle must be modified to allow the employee to operate it safely in the following order of preference:

(a) A motor vehicle owned by the injured employee must be so modified if the insurer or employer providing accident benefits determines that it is reasonably feasible to do so.

(b) A used motor vehicle must be so modified if the insurer or employer providing accident benefits determines that it is reasonably feasible to do so.

(c) A new motor vehicle must be so modified.

4. The Administrator shall adopt regulations establishing a maximum benefit to be paid under the provisions of this section.

Sec. 7. NRS 616C.315 is hereby amended to read as follows:

616C.315 1. Any person who is subject to the jurisdiction of the hearing officers pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS may request a hearing before a hearing officer of any matter within the hearing officer's authority. The insurer shall provide, without cost, the forms necessary to request a hearing to any person who requests them.

2. ***A hearing must not be scheduled until the following information is provided to the hearing officer:***

(a) The name of:

(1) The claimant;

(2) The employer; and

(3) The insurer or third-party administrator;

(b) The number of the claim; and

(c) If applicable, a copy of the letter of determination being appealed, or if such a copy is unavailable, the date of the determination and the issues stated in the determination.

3. Except as otherwise provided in NRS 616B.772, 616B.775, 616B.787 and 616C.305, a person who is aggrieved by:

(a) A written determination of an insurer; or

(b) The failure of an insurer to respond within 30 days to a written request mailed to the insurer by the person who is aggrieved,

may appeal from the determination or failure to respond by filing a request for a hearing before a hearing officer. Such a request must ***include the information required pursuant to subsection 2 and must*** be filed within 70 days after the date on which the notice of the insurer's determination was mailed by the insurer or the unanswered written request was mailed to the insurer, as applicable. The failure of an insurer to respond to a written request for a determination within 30 days after receipt of such a request shall be deemed by the hearing officer to be a denial of the request.

~~[3.]~~ ***4.*** Failure to file a request for a hearing within the period specified in subsection ~~[2]~~ ***3*** may be excused if the person aggrieved shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to request a

hearing. The claimant or employer shall notify the insurer of a change of address.

~~[4.]~~ ***5.*** The hearing before the hearing officer must be conducted as expeditiously and informally as is practicable.

~~[5.]~~ ***6.*** The parties to a contested claim may, if the claimant is represented by legal counsel, agree to forego a hearing before a hearing officer and submit the contested claim directly to an appeals officer.

Sec. 8. NRS 616C.330 is hereby amended to read as follows:

616C.330 1. The hearing officer shall:

(a) ~~[Within]~~ ***Except as otherwise provided in subsection 2 of NRS 616C.315, within*** 5 days after receiving a request for a hearing, set the hearing for a date and time within 30 days after his receipt of the request;

(b) Give notice by mail or by personal service to all interested parties to the hearing at least 15 days before the date and time scheduled; and

(c) Conduct hearings expeditiously and informally.

2. The notice must include a statement that the injured employee may be represented by a private attorney or seek assistance and advice from the Nevada Attorney for Injured Workers.

3. If necessary to resolve a medical question concerning an injured employee's condition or to determine the necessity of treatment for which authorization for payment has been denied, the hearing officer may refer the employee to a physician or chiropractor of his choice who has demonstrated special competence to treat the particular medical condition of the employee. If the medical question concerns the rating of a permanent disability, the hearing officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians and chiropractors maintained by the Administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any medical examination requested by the hearing officer.

4. If an injured employee has requested payment for the cost of obtaining a second determination of his percentage of disability pursuant to NRS 616C.100, the hearing officer shall decide whether the determination of the higher percentage of disability made pursuant to NRS 616C.100 is appropriate and, if so, may order the insurer to pay to the employee an amount equal to the maximum allowable fee established by the Administrator pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.

5. The hearing officer shall order an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 to pay the charges of a provider of health care if the conditions of NRS 616C.138 are satisfied.

6. The hearing officer may allow or forbid the presence of a court reporter and the use of a tape recorder in a hearing.

7. The hearing officer shall render his decision within 15 days after:

(a) The hearing; or

(b) He receives a copy of the report from the medical examination he requested.

8. The hearing officer shall render his decision in the most efficient format developed by the Chief of the Hearings Division of the Department of Administration.

9. The hearing officer shall give notice of his decision to each party by mail. He shall include with the notice of his decision the necessary forms for appealing from the decision.

10. Except as otherwise provided in NRS 616C.380, the decision of the hearing officer is not stayed if an appeal from that decision is taken unless an application for a stay is submitted by a party. If such an application is submitted, the decision is automatically stayed until a determination is made on the application. A determination on the application must be made within 30 days after the filing of the application. If, after reviewing the application, a stay is not granted by the hearing officer or an appeals officer, the decision must be complied with within 10 days after the refusal to grant a stay.

Sec. 9. NRS 616C.345 is hereby amended to read as follows:

616C.345 1. Any party aggrieved by a decision of the hearing officer relating to a claim for compensation may appeal from the decision by filing a notice of appeal with an appeals officer within 30 days after the date of the decision.

2. ***A hearing must not be scheduled until the following information is provided to the appeals officer:***

(a) The name of:

(1) The claimant;

(2) The employer; and

(3) The insurer or third-party administrator;

(b) The number of the claim; and

(c) If applicable, a copy of the letter of determination being appealed, or if such a copy is unavailable, the date of the determination and the issues stated in the determination.

3. If a dispute is required to be submitted to a procedure for resolving complaints pursuant to NRS 616C.305 and:

(a) A final determination was rendered pursuant to that procedure; or

(b) The dispute was not resolved pursuant to that procedure within 14 days after it was submitted,

any party to the dispute may file a notice of appeal within 70 days after the date on which the final determination was mailed to the employee, or his dependent, or the unanswered request for resolution was submitted. Failure to render a written determination within 30 days after receipt of such a request shall be deemed by the appeals officer to be a denial of the request.

~~[3.]~~ ***4.*** Except as otherwise provided in NRS 616C.380, the filing of a notice of appeal does not automatically stay the enforcement of the decision of a hearing officer or a determination rendered pursuant to NRS 616C.305. The appeals officer may order a stay, when appropriate, upon the application of a party. If such an application is submitted, the decision is automatically stayed until a determination is made concerning the application. A determination on the application must be made within 30 days after the filing of the application. If a stay is not granted by the officer after reviewing the application, the decision must be complied with within 10 days after the date of the refusal to grant a stay.

~~[4.]~~ ***5.*** Except as otherwise provided in this subsection ~~[,]~~ ***and subsection 2***, the appeals officer shall, within 10 days after receiving a notice of appeal pursuant to this section or a contested claim pursuant to subsection ~~[5]~~ ***6*** of NRS 616C.315, schedule a hearing on the merits of the appeal or contested claim for a date and time within 90 days after his receipt of the notice and give notice by mail or by personal service to all parties to the matter and their attorneys or agents at least 30 days before the date and time scheduled. A request to schedule the hearing for a date and time which is:

(a) Within 60 days after the receipt of the notice of appeal or contested claim; or

(b) More than 90 days after the receipt of the notice or claim,

may be submitted to the appeals officer only if all parties to the appeal or contested claim agree to the request.

~~[5.]~~ ***6.*** An appeal or contested claim may be continued upon written stipulation of all parties, or upon good cause shown.

~~[6.]~~ ***7.*** Failure to file a notice of appeal within the period specified in subsection 1 or ~~[2]~~ ***3*** may be excused if the party aggrieved shows by a preponderance of the evidence that he did not receive the notice of the determination and the forms necessary to appeal the determination. The claimant, employer or insurer shall notify the hearing officer of a change of address.

Sec. 10. NRS 616C.360 is hereby amended to read as follows:

616C.360 1. A stenographic or electronic record must be kept of the hearing before the appeals officer and the rules of evidence applicable to contested cases under chapter 233B of NRS apply to the hearing.

2. The appeals officer must hear any matter raised before him on its merits, including new evidence bearing on the matter.

3. If ~~[necessary to resolve]~~ ***there is*** a medical question ***or dispute*** concerning an injured employee's condition or ~~[to determine]~~ ***concerning*** the necessity of treatment for which authorization for payment has been denied, the appeals officer may ~~[refer]~~ ***:***

(a) Refer the employee to a physician or chiropractor of his choice who has demonstrated special competence to treat the particular medical condition of the employee. If the medical question concerns the rating of a permanent disability, the appeals officer may refer the employee to a rating physician or chiropractor. The rating physician or chiropractor must be selected in rotation from the list of qualified physicians or chiropractors maintained by the Administrator pursuant to subsection 2 of NRS 616C.490, unless the insurer and the injured employee otherwise agree to a rating physician or chiropractor. The insurer shall pay the costs of any examination requested by the appeals officer.

(b) If the medical question or dispute is relevant to an issue involved in the matter before the appeals officer and all parties agree to the submission of the matter to an external review organization, submit the matter to an external review organization in accordance with section 5 of this act and any regulations adopted by the Commissioner.

4. If an injured employee has requested payment for the cost of obtaining a second determination of his percentage of disability pursuant to NRS 616C.100, the appeals officer shall decide whether the determination of the higher percentage of disability made pursuant to NRS 616C.100 is appropriate and, if so, may order the insurer to pay to the employee an amount equal to the maximum allowable fee established by the Administrator pursuant to NRS 616C.260 for the type of service performed, or the usual fee of that physician or chiropractor for such service, whichever is less.

5. The appeals officer shall order an insurer, organization for managed care or employer who provides accident benefits for injured employees pursuant to NRS 616C.265 to pay the charges of a provider of health care if the conditions of NRS 616C.138 are satisfied.

6. Any party to the appeal or the appeals officer may order a transcript of the record of the hearing at any time before the seventh

day after the hearing. The transcript must be filed within 30 days after the date of the order unless the appeals officer otherwise orders.

7. The appeals officer shall render his decision:

(a) If a transcript is ordered within 7 days after the hearing, within 30 days after the transcript is filed; or

(b) If a transcript has not been ordered, within 30 days after the date of the hearing.

8. The appeals officer may affirm, modify or reverse any decision made by the hearing officer and issue any necessary and proper order to give effect to his decision.

Sec. 11. Notwithstanding the amendatory provisions of this act, an appeals officer shall not submit a matter for external review pursuant to NRS 616C.360, as amended by this act, until the Commissioner of Insurance has issued a certificate pursuant to section 3 of this act to at least one external review organization that is qualified to conduct an external review of the matter.

Sec. 12. 1. This section and sections 7 and 9 of this act become effective upon passage and approval.

2. Sections 1 to 6, inclusive, 8, 10 and 11 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2003, for all other purposes.

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